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Introduction and purpose

Recent supply chain issues have meant that dealers are turning to auctions more often. As a result, some dealers are finding themselves in situations they're not sure how to handle. As part of its commitment to be a modern regulator, OMVIC is offering guidance on how best to support the industry and protect consumers – including those involved in auctions – given today's environment.

There are no special exceptions to be made for auctions that choose to register with OMVIC. Even though they're not required to register, many auctions opt to do so because they see potential benefits to their reputations, regulatory oversight, the ability to transact with other registered dealers, etc. Once they do, the law stipulates that they are bound by the same rules, terms and conditions as other Registrants.

Only those registered under the *Ontario Motor Vehicle Dealers Act* and their licensed representatives are permitted to carry out business transactions at auctions. Retail buyers are at no time allowed on auction premises.

[Section 2 of Regulation 333/08 GENERAL](#) provides specific details about the classes of persons that are exempt from the Act. This information can be found in the Appendix at the end of this document.

With auctions, as with other types of activities, OMVIC's role as a regulator is to investigate possible violations of the MVDA and its regulations through supporting evidence. The Dealer Support Team will review the supporting information and determine whether the complaint is within OMVIC's jurisdiction. The Dealer Support Team can only process complaints when a dealer fails to comply with the legislation and/or regulations. OMVIC will make reasonable attempts to address complaints between dealers, or dealers and auctions, but legally it can't act as an arbitrator and impose decisions on parties.

Terminology

- For the purposes of these guidelines, the word "Act" refers to the [Motor Vehicle Dealers' Act](#) (MVDA).
- [The Regulation](#) refers to Regulation 333/08 GENERAL
- [The Code of Ethics](#) refers to Regulation 332/08 Code of Ethics and Operation of Committees

Context

Dealers who use an auction platform to purchase inventory should review the terms and conditions of the auction sale. Buyers should consider arbitration deadlines, mileage limitations, motor vehicle condition and vehicle history when completing a sale.

Auctions – whether they're registered or not – do not qualify as consumers. Dealers are expected to use their industry knowledge when engaging with other Registrants.

Guidelines

Requirements

The Regulation sets out the requirements for participating in wholesale auctions:

1. Only registered dealers and dealers registered in another jurisdiction are permitted to purchase vehicles at wholesale auctions.
2. If an auction is conducted where bidders are physically present, the bidding area is restricted to registered dealers, OMVIC staff, law enforcement personnel, directors or officers of the auction or those in their company, and employees or agents of the sellers.
3. Everyone in the bidding area must wear a visible photo ID. Only registrants or out-of-province dealers who have registered with OMVIC are permitted to bid. Non-registrants in the bidding area cannot be there for the purpose of acquiring a vehicle.
4. Wholesale auctions can also require further documentation and information from a dealer wishing to register to obtain an auction card. The auction card is required to be presented by the registered person to enter and access the bidding area of the auction. The information could include:
 - Dealer HST registration
 - Dealer Vendor Permit (HST)
 - Trade and credit references
 - Proof of insurance
 - Copy of other auction cards
5. It is an offence for a registrant to facilitate access to a wholesale auction, regardless of whether the auction is conducted in person or over the Internet.

6. Dealers selling at auctions must comply with certain disclosure requirements (sections 4 and 5 of the Code of Ethics). This includes disclosing any facts “that” could reasonably be expected to influence the decision of a reasonable buyer.

Any dealer violating these rules may be subject to a loss of auction privileges and further administrative action.

Exemptions

The Regulation defines the classes of persons that are exempt from the Act (exempt from registration with OMVIC).

Persons and their employees and agents who conduct an auction of motor vehicles (known as wholesale auctions) are exempt from the requirement of registration as a motor vehicle dealer pursuant to the Act if they satisfy the following conditions:

- They have no property interest in any of the motor vehicles being sold;
- Vehicles sold are owned by a motor vehicle dealer or a person exempt from registration requirements of the MVDA, and the sale of vehicles is only to registered motor vehicle dealers;
- They have made best efforts to ensure that disclosure required by the Code of Ethics Regulations of the MVDA regulations has taken place; and
- That access to the auction is limited to Registrants.

Other jurisdictions

OMVIC also reviewed the policies and practices of other Canadian jurisdictions. Three other provinces were reviewed, however, it appeared that their jurisdiction over auctions – like Ontario’s – was either limited or not applicable.

The only province that did offer something more substantive was BC. Under the Motor Dealer Act (MDA) of British Columbia, auctions must get a written disclosure statement from the eligible seller about the eligible vehicle and pass it along to the eligible bidder to maintain the exemption from Act.

The statement must make the standard declarations required in Section 23 of the British Columbia’s *Motor Dealer Act* and, if the vehicle is not equipped for transportation, the auction must include a statement that the vehicle is not suitable for transportation.

About OMVIC and these guidelines

The Ontario Motor Vehicle Industry Council (OMVIC) administers and enforces the *Motor Vehicle Dealers Act, 2002* (MVDA), its regulations and Code of Ethics, as well as relevant sections of the *Consumer Protection Act* (CPA), on behalf of Ontario's Ministry of Public and Business Service Delivery.

OMVIC's mandate is to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism and ensuring fair, honest and open competition for registered motor vehicle dealers.

As businesses and markets evolve, industries continue to experience trends and changes that require regulators to adapt, in an effort to ensure regulatory expectations are clear and readily available. Consequently, registrants often seek guidance to ensure their businesses are compliant with relevant legislation and consumer protection measures.

The list of available guidelines can be found [here](#). Once the page opens, you'll see the guidelines listed on the left-hand side.

Contact

The Dealer Support team is available to assist dealers in achieving and maintaining compliance with the MVDA and Code of Ethics. Registrants who wish to contact Dealer Support can reach the team at the phone number below and leave a message. Messages are returned in priority sequence.

Phone: 1-800-943-6002 ext. 4

Email: dealers@omvic.on.ca

Appendix – legislative/regulatory references

Excerpts from the [Regulation 333/08 – General](#)

- **Exemption of certain persons from Act**

2. (1) The classes of persons described in each of the following paragraphs are exempt from the Act and the regulations in connection with carrying on the activities described in the paragraph:

1. A person who arranges for and conducts an auction of motor vehicles and the person's employees and agents acting for the purpose of the auction if the conditions set out in subsection (3) are satisfied.
5. An executor or estate trustee who trades in a motor vehicle in the course of performing the person's duties or a person who arranges for and conducts an auction to make such a trade on behalf of an executor or estate trustee.

12. A person who sells a stock of motor vehicles on behalf of their owner by means of an auction open to the public if,

i. the vehicles were owned in connection with a business of the owner of the vehicles and the sale of the vehicles is part of the sale of the assets of that business for the purposes of the business ceasing operations,

ii. the auction is held at the owner's place of business or at another location that the person arranges and that is suitable for the auction, and

22. A person who receives a motor vehicle from a purchaser or lessee as all or part of the consideration for supplying a motor vehicle under a trade described in paragraph 21. O. Reg. 333/08, s. 2 (1); O. Reg. 221/09, s. 2 (1)

(2) An individual to whom section 5 of the Act applies with respect to a trade described in that section or a person who arranges for and conducts an auction to make such a trade on behalf of one such individual

Excerpts from the [Code of Ethics](#)

- **Disclosure and marketing**

4. (1) A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles. O. Reg. 332/08, s. 4 (1).

(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful. O. Reg. 332/08, s. 4 (2).

(3) Before entering into a contract with a customer who is not a registered motor vehicle dealer in respect of a trade in a motor vehicle, a registered motor vehicle dealer shall explain to the customer the terms of the contract between the customer and the dealer, including the financial and other obligations, if any, of the customer under the contract. O. Reg. 332/08, s. 4 (3).

- **Disclosure of information in contracts of sale and lease**

5. A registered motor vehicle dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure that the following information is disclosed in the contract:

1. If the vehicle is a used motor vehicle, the total distance that it has been driven if the dealer can determine the distance.
2. If the vehicle is a used motor vehicle and the dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.
3. If the vehicle is a used motor vehicle and the dealer can determine neither the total distance that the

and no other individuals at the same time is exempt from the Act and the regulations in connection with that trade. O. Reg. 333/08, s. 2 (2).

(3) The conditions mentioned in paragraph 1 of subsection (1) are the following:

1. The person arranging for and conducting the auction and the person's employees and agents do not have a property interest in any of the motor vehicles being sold.
2. The person arranging for and conducting the auction does not allow a person to sell a motor vehicle at the auction unless the person selling the vehicle is a registered motor vehicle dealer, is exempt from registration or is the Crown.
3. The person arranging for and conducting the auction uses best efforts to ensure that, before a motor vehicle is sold at the auction, the person selling the vehicle appears, on a reasonable basis, to have complied with section 5 of Ontario Regulation 332/08 (Code of Ethics and Operation of Committees) made under the Act, whether or not that regulation applies to the person selling the vehicle.
4. If the auction is conducted so that bidders are physically present, there is a restricted area for bidding and only the following are allowed in the bidding area and only if they wear visible photo identification:
 - i. Registrants.
 - ii. The registrar, deputy registrars, the director, deputy directors, investigators appointed under subsection 18 (1) of the Act and persons designated by the registrar under subsection 15 (1) of the Act.
 - iii. The following persons if they attend for a purpose other than to acquire an interest in a motor vehicle:

A. Law enforcement officers.

vehicle has been driven, nor the distance that the vehicle has been driven as of some past date, a statement that the total distance that the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer.

4. If the vehicle's odometer is broken or faulty, has been replaced, has been rolled back or is in miles, a statement to that effect.
5. If any of the following is true of the vehicle, a statement to the effect that the vehicle was previously,
 - i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*,
 - ii. used as a police cruiser or used to provide emergency services, or
 - iii. used as a taxi or limousine.
6. If the vehicle has sustained any damage caused by fire, a statement to that effect.
7. If the vehicle has sustained any damage caused by immersion in liquid that has penetrated to the level of at least the interior floorboards, a statement to that effect.
8. If there has been structural damage to the vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.
9. If the vehicle is equipped with an anti-lock braking system that is not operational, a statement to that effect.
10. If any of the vehicle's airbags are missing or are not operational, a statement to that effect.
11. If the vehicle is materially different from the original or advertised production specifications, a statement to that effect.

- B. Employees or agents of the person arranging for and conducting the auction if they are acting for the purpose of the auction.
- C. Directors and officers of the person arranging for and conducting the auction if the person is not an individual.
- D. Persons in the company of the person arranging for and conducting the auction or in the company of a director or officer of that person.
- E. Employees or agents of a seller of a vehicle at the auction who attend the auction for the purpose of the sale of the vehicle by the seller.

- 5. If the auction is conducted so that bidders have access to the auction through electronic means, the electronic access is provided through a secure means that ensures that only registrants have the electronic access.
- 6. At the request of the registrar, the person arranging for and conducting the auction provides the registrar with information about any trade conducted in the auction and with access to the person's records relating to,
 - i. the persons allowed in the bidding area, and
 - ii. the persons who are allowed to bid in the auction through electronic means.
- 7. The motor vehicles sold at the auction are sold only to registered motor vehicle dealers or to persons who, at the time of the sale, are located in another jurisdiction and registered in that jurisdiction as persons with equivalent status to registered motor vehicle dealers. O. Reg. 333/08, s. 2 (3); O. Reg. 221/09, s. 2 (2).

- **Requirements at exempt auctions**

- 34. (1) If a person who arranges for and conducts an auction of motor vehicles is exempt, under paragraph 1 of

- 12. If the vehicle has two or more adjacent panels that are not bumper panels and that have been replaced, a statement to that effect.
- 13. REVOKED: O. Reg. 220/09, s. 1.
- 14. The make, model, trim level and model year of the vehicle.
- 15. If any badge or other indication on the vehicle relates to a different model than the model of the vehicle, a statement to that effect.
- 16. If the total costs of repairs to fix the damage caused to the vehicle by an incident exceed \$3,000, a statement to that effect and if the dealer knew the total costs, a statement of the total costs.
- 17. If the manufacturer's warranty on the vehicle was cancelled, a statement to that effect.
- 18. If the vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect.
- 19. If the vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.
- 20. If the vehicle has been classified, under section 199.1 of the *Highway Traffic Act*, as irreparable, salvage or rebuilt, a statement as to how it was last classified.
- 21. If the vehicle had been recovered after being reported stolen, a statement to that effect.
- 22. Any other fact about the vehicle that affects the structural or mechanical quality or performance of the vehicle and that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the

subsection 2 (1), from the Act and the regulations in connection with the auction and conducts the auction so that bidders are physically present, no registrant shall facilitate access into the bidding area by persons other than those set out in paragraph 4 of subsection 2 (3). O. Reg. 333/08, s. 34 (1).

(2) If the person who arranges for and conducts an auction of motor vehicles is exempt, under paragraph 1 of subsection 2 (1), from the Act and the regulations in connection with the auction and conducts the auction so that bidders have access to the auction through electronic means, no registrant shall permit or facilitate access to the auction through electronic means by any person who is not a registrant. O. Reg. 333/08, s. 34 (2).

- **Retail sales at auctions**

46. A motor vehicle dealer registered as a general dealer who arranges for the sale of one or more motor vehicles at an auction conducted by that dealer shall ensure that,

- (a) no person sells a motor vehicle at the auction unless,
 - (i) the person is a registered motor vehicle dealer, is exempt from the Act and the regulations or is the Crown, and
 - (ii) the dealer clearly discloses on whose behalf the vehicle is being sold, if it is not being sold on the dealer's behalf; and
- (b) before a motor vehicle is sold at the auction, the person selling the vehicle appears, on a reasonable basis, to have complied with section 5 of Ontario Regulation 332/08 (Code of Ethics and Operation of Committees) made under the Act, whether or not that regulation applies to the person selling the vehicle. O. Reg. 221/09, s. 17.

vehicle. O. Reg. 332/08, s. 5; O. Reg. 220/09, s. 1.